IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.2.2007

CORAM

THE HON'BLE MR.JUSTICE S.ASHOK KUMAR

CRP(PD) No. 1657 of 2006
and C.M.P.No.1 of 2006

1. The President
   Mecca Masjid Endowments
   822, Anna Salai,
   Chennai-2

2. The Secretary
   Mecca Masjid Endowments
   822, Anna Salai,
   Chennai-2 ... Petitioners /Appellants

Vs.

1. The Tamil Nadu Wakf Board
   rep. By its Chief Executive Officer
   7/4, 9th Cross Street,
   Indira Nagar, Chennai-20

2. Syed Imam
   Turn Holding Trustee,
   Dargah Hazarath
   Syed Moosa Sha Khadri Darga
   Anna Salai, Chennai-2

3. Syed Ismail
   Turn Holding Trustee,
   Dargah Hazarath
   Syed Moosa Sha Khadri Darga
   Anna Salai, Chennai-2

4. Syed Ahamed Jan
   Turn Holding Trustee,
   Dargah Hazarath
   Syed Moosa Sha Khadri Darga
   Anna Salai, Chennai-2

5. Syed Moideen
   Turn Holding Trustee,
   Dargah Hazarath
   Syed Moosa Sha Khadri Darga
   Anna Salai, Chennai-2

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6. Syed Javeed
Turn Holding Trustee,
Dargah Hazarath
Syed Moosa Sha Khadri Darga
Anna Salai, Chennai-2 .. Respondents/Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final order dated 16.10.2006 made in I.A.No.14274 of 2006 in O.A.No.6 of 2006 passed by the learned I Assistant Judge, City Civil Judge, Chennai - Appellate Tribunal under the T.N.Wakf Act.

For Petitioner :: Mr.T.R.Rajagopalan, S.C.,
for Mr.Haja Mohideen Gisti

For Respondent :: Mr.S.Thiruvengadasamy for R.1
Mr.Satish Parasaran for
RR 2 to 6.

ORDER

This revision has been preferred against the order of the Wakf Tribunal (I Assistant Judge, City Civil Judge, Chennai) dismissing the application in I.A.No:14274 of 2006 for suspending the order of the Wakf Board dated 6.4.2006.

2. Admittedly there was a dispute between the petitioners, Makkah Masjid Endowments and the Hazarath Syed Moosa Sha Khadri Darga as to the encroachment of the burial territory and construction of buildings by demolishing the burial ground. After inspection by the Area Committee Members, the first respondent Wakf Board after directed the petitioner to construct a compound wall demarcating the properties between them, for the non compliance of the same, passed the impugned final order on 6.4.2006 dismissing the managing Committee of the petitioner Endowments and took over the direct control of the same since they allegedly failed to comply with the order dated 31.1.2006 in respect of construction of the compound wall. It is as against the said order an appeal was preferred before the Wakf Tribunal and since the interim order of suspension has been refused by the Tribunal, the present revision has been filed.

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3. The gist of the revision petitioners' case is as follows:-
The Revision Petitioner is the President and the Secretary of Mecca Masjid Endowments, Anna Salai, Chennai-2. Certain complaints were received by the Wakf Board against the Management Committee of the petitioner Wakf and the 1st petitioner was asked to show cause as to why action should not be taken against the first petitioner on the said charges. The Revision Petitioners submitted their reply dated 16.8.2005 denying the charges. It is also contended that the copies of the said complaints received were not forwarded to the petitioners along wit the show cause notice. Subsequent to the submissions of the above reply by the petitioners, the Wakf Board passed an order on 31.1.2006 directing the petitioners to construct a dividing wall between the

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Mosque and Durgah. According to the revision petitioners, there was no notice of enquiry on the complaints at any point of time from the Wakf Board to the petitioners. As the complainants insisted on a demarcation wall between the Durgha and the Mosque, the Wakf Board passed an order on the issue relating to demarcation on 31.1.2006. In the order, the Wakf Board had specifically mentioned that the complaints will be dealt with after enquiry. However, on 6.4.2006 without holding any enquiry, the final order was passed by the Wakf Board in and by which the Board held that the charges against the petitioners are proved and therefore ordered removal of the Committee of Management and decided to take over administration of the Wakf. Challenging the same, the petitioners filed O.A.No:6 of 206 before the Wakf Tribunal and sought for interim suspension of the order of the Wakf Board's communication on 24.6.2006. The Tribunal dismissed the application without considering the invalidity of the impugned order passed by the Wakf Board. Aggrieved of the order passed by the Wakf Tribunal, this CRP is filed.

4. Mr.T.R.Rajagopalan, learned Senior Counsel appearing for the revision petitioners contended that no record was produced before the Tribunal by the Wakf Board relating to the proceedings dated 31.1.2006. There was no notice of any enquiry either before 31.1.2006 or after 31.1.2006 in relation to the charges or the complaints filed against the petitioners. According to the learned senior counsel, in fact, in the order dated 31.1.2006, the Wakf Board has categorically stated that the complaints will be dealt with after enquiry. But, inspite of the said fact, the Wakf Board proceeded to pass the impugned order as though the enquiry was held relating to the charges and directed removal of the Management Committee of the Wakf.

5. Learned Senior Counsel referred to Section 64(3) of the Wakf Act, 1995, which reads as follows:-

> Section 64(3):- "No action shall be taken by the Board under Sub Section (1) unless it has held an enquriy into the matter in a prescribed manner and the decision had been taken by a majority of not less than 2/3rds of the members of the Board.

6. According to the learned counsel, in the present, case no enquiry was held as contemplated under Section 64(3) of the Act. The Wakf Board as well as the respondents in the proceedings filed counter affidavits before the Wakf Tribunal. In the counter affidavits, thought it is alleged that there was an enquiry on 31.1.2006 in relation to the complaints filed by respondents 2 to 5, that the order passed on 31.1.2006 was only a preliminary order and the impugned order dated 6.4.2006 was the final order. The above stand cannot be accepted as the Wakf Board in its order dated 31.1.2006 has categorically observed that the complaints will be dealt with after enquiry. Thus there is a clear violation of Section 64(3) of the Wakf Act and therefore the order is liable to be set aside on that ground alone.

7. Learned Senior Counsel also placed reliance on the decision of this Court reported in AIR 2000 Madras 412 (Hajee Dr.Syed Latheefuddin Shah (died) and others Vs. Tamil Nadu Wakf Board, Madras and others)

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wherein it has been held that the removal of Muthavalli without proper notice and enquiry as contemplated under Section 64 is violative of principles of natural justice and quashed the order of the Wakf Board.

8. So also in AIR 2004 Karnataka 295 (Syed Enayathulla Vs. State of Karnataka), the Karnataka High Court held that compliance of Section 64 (3) of the Wakf Act is mandatory. In that case the court found that no enquiry was held by affording opportunity to Muthavalli to participate in the enquiry and therefore it was held that the order removing Muthavalli is clearly illegal and quashed the order of the Wakf Board.

9. According to the learned Senior Counsel, no documentary or oral evidence was let in by the parties as stated in paragraph 6 of the impugned order. However, the learned Judge referred to certain documents and photographs and passed the order relying upon those documents, which is clearly illegal and unsustainable. Though the revision petitioners had taken a specific stand in the appeal before the Tribunal that no enquiry was held as per the Wakf Act, the Tribunal had not adverted to the said aspect in the impugned order. The decision is given only on the basis that the order was passed by 2/3rd of the members and therefore it is a valid decision. But, when the Wakf Board itself has observed in its order dated 31.1.2006 that the complaints will be dealt with after enquiry, the present order of the Wakf Board removing the Management Committee of the Wakf is clearly illegal and therefore the order is liable to be suspended.

10. Per contra, the learned counsel for the first respondent contended that the Wakf Board had taken into consideration the various misdeeds and atrocities of Makkah Masjid Endowments and it issued a show cause notice on 28.9.2005. To the said notice the Secretary sent a reply on 16.8.2005. In the meanwhile the respondents 2 to 6 had filed an application before the Tamil Nadu Wakf Board for framing of a scheme for better administration and for other reliefs. The Wakf Board conducted enquiry in R.C.No.10661/C2/Che/2005 on various occasions. The petitioners were given notice of hearing and explanation was submitted by the Secretary. There were three hearing and the Secretary and Treasurer were present and they had entered appearance through their Advocate and defended the show cause notice issued against them. During the time of enquiry conducted by the Wakf Board with a view to give a quietus to the issue and with a view to stop further desecration and destruction of the graves and Dharghas the Wakf Board advised the petitioner to construct a compound wall demarcating the graves and the darghas. The said proposal was accepted by the Secretary of the petitioner Endowment who was physically present at the time of enquiry. But with ulterior motives he failed to do so. Then the Wakf Board issued two reminders to inform about the compliance of the order passed by it on 31.1.2006. But no reply was forthcoming and as there is a willful disobedience of its order, the Wakf Board by its order dated 6.4.2006 ordered for removal of the committee and to take over the direct management of the said Endowment and published the same in the Government Gazette dated 21.6.2006. Therefore, since the impugned order had worked out itself, as on this date nothing survives in the CRP and it is liable to be dismissed.

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11. As rightly contended by the learned senior counsel appearing for the revision petitioners, under Section 64(3) of the Wakf Act, no action shall be taken by the Board under Sub Sec.(1) without any enquiry in the prescribed manner. But in the preliminary order dated 31.1.2006 based on which the impugned final order has been passed there is a categorical observation that the complaints will be dealt with after enquiry. But, there is no oral or documentary proof to hold that any enquiry was held after 31.1.2006. Neither members of the management committee or the Muthavalli were summoned. Though it is averred by the learned counsel for the first respondent that hearings were conducted on several occasions and the President of the Endowment physically present and undertook to construct the compound wall, he is not able to prove the same before the Wakf Tribunal with relevant dates by adducing sufficient oral and documentary evidence in that regard. This is fortified as seen from Paragraph 6 of the impugned order of the Wakf Tribunal wherein it is mentioned that no oral or documentary evidence was let in by the parties. From the two decisions relied on by the learned senior counsel for the revision petitioners, cited supra, it is clear that compliance of Section 64(3) of the Wakf Act is mandatory and non compliance of the same will result in illegality. While that be so, the Wakf Tribunal has erred in arriving at the perverse finding that by merely perusing the photographs in the absence of direct evidence that the badminton court and the shopping complex has been constructed by demolishing the graves of the ancestors of the respondents 2 to 6.

For the reasons stated above, the order of the Wakf Tribunal, dated 16.10.2006 made in I.A.No.14274 of 2006 in O.A.No.6 of 2006 is set aside. However, the Wakf Board is given liberty to pass fresh orders after conducting proper enquiry as contemplated under Section 64(3) of the Wakf Act, pending the O.A.No.6 of 2006 before the Wakf Tribunal. With this direction, the CRP is allowed. Consequently, connected Miscellaneous Petition is closed. No costs.

gkv

Sd/-
Assistant Registrar,

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Sub Assistant Registrar.

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Copy to:

1. The Registrar,
(I Assistant Judge,
City Civil Court,
Chennai.

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2. The Chief Executive Officer,
Tamil Nadu Wakf Board
7/4, 9th Cross Street,
Indira Nagar, Chennai-20

+ One cc to Mr. S. Haja Mohideen Gisthi, Advocate SR 9723
+ 2 CCS to Mr. T. Velumani Advocate SR 9743
+ One cc to mr. S. Thiruvenkatasamy, Advocate SR 9630

RA (co)
sg 23/2/07

Pre-delivery order in
CRP(PD)No. 1657/2006
Delivered on 19.2.2007

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